

II. Applicants Traverse the Requirement

On page 2 of the Office Action, the Examiner asserts that applicants must elect between species drawn to FIG. 2 (Species 1), to FIG. 3 (Species 2), to FIGs. 4a and 4b (Species 3), to FIGs. 6a and 6b (Species 4), to FIGs. 7a and 7b (Species 5), and to FIGs. 10a to 10c (Species 6). As noted in MPEP 806.04, “if [an] application contains claims directed to more than a *reasonable number of species*, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.” (italics added). As such, applicants are allowed to have a reasonable number of species included in a single application without election there between.

Additionally, there is insufficient evidence of a need for the election. The Examiner has not provided evidence that the Examiner will experience an undue burden in searching and examining the invention set forth in Species 1 through 6. Specifically, the Examiner has not provided evidence that the existence of six species represents an unreasonable number of species to be searched, and has not provided a rationale as to why the invention is to be separated into Species 1 through 6. Such a finding and evidence supporting the finding is required in order to prevent piecemeal examination and for meaningful review to be provided under the Administrative Procedures Act, 5 U.S.C. §706. In re Zurko, 59 USPQ2d 1693 (Fed. Cir. 2001). Consistent with the requirements in MPEP 803 and 808, the Examiner needs to provide a rationale as to why an election is required or how, without the election, the Examiner is unduly burdened in comparison with the burden visited on the applicants in the extra delay and expense in obtaining protection for each Species.

As such, it is respectfully submitted that the Examiner has not presented sufficient evidence of a burden on the Examiner in examining Species 1 through 6 which is out of proportion with the delay and expense visited on the applicants in protecting the invention recited in Species 2 through 6 so as to show an undue burden on the Examiner or an unreasonable number of species so as to also require an election between these species. As such, it is respectfully requested that the Examiner reconsider and withdraw the election.

III. Conclusion

Upon review of references involved in this field of technology, and when all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's initial restriction requirement, all of the pending claims should be examined in the subject application.

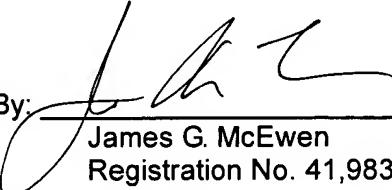
Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

If there are any additional fees associated with the filing of this Response, please charge the same to our Deposit Account No. 503333.

Respectfully submitted,

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